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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
	)	
Amendment of the Commission's	)	WT Docket 95-157
Rules Regarding a Plan for	)	RM-8643
Sharing the Costs of	)	
Microwave Relocation	)	

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REPLY COMMENTS OF THE SPRINT TELECOMMUNICATIONS VENTURE

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January 12, 1996

SUMMARY

The comments submitted in this docket overwhelmingly demonstrate the scope and gravity of the incumbent abuses the Sprint Telecommunications Venture ("STV") outlined in its initial comments. In light of this concrete and compelling evidence, we urge the Commission to move quickly to clarify its rules to permit microwave relocations to be accomplished fairly and even-handedly.

The single best option, as we set out in our initial comments, would be for the Commission to collapse the "voluntary" and "mandatory" negotiation periods into a single good-faith negotiation period. This solution would be precisely consistent with the original intention of the rules. Much less preferably, the Commission could establish bright-line standards for bad-actor conduct during the voluntary negotiation period. In these replies, we refine the test STV proposed in its initial comments for the determination of "bad actor" conduct to permit flexibility in accomplishing relocations of entire microwave systems. Under STV's proposed test, as refined here, a microwave incumbent would only be found to be a bad actor if it rejected the PCS licensee's proposal either (1) to reimburse it for all costs of relocating to comparable facilities in another frequency band *plus* a 20 percent premium payment (lowered to 10 percent after the first year) or (2) to reimburse its costs of relocating an entire microwave system from the PCS licensee's geographic area and a licensed PCS frequency band to comparable alternative facilities. These proposals meet every legitimate concern raised by incumbents in this docket and should be adopted.

STV also discusses the appropriate standard for reimbursement for incumbent consultants and attorneys and certain refinements to the Commission's proposed cost-sharing rules. Specifically, STV recommends that the Commission utilize the "reasonable and prudent" standard for reimbursement of consultants and attorneys; that the Commission adopt STV's proposed "soft cap" approach to cost-sharing; that the cost-sharing clearinghouse be run entirely by the PCS industry; and that the "proximity threshold" standard be adopted, based on two studies performed by Comsearch that are attached to these replies.

CONTENTS

Attachments

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Amendment to the Commission's Rules	)	WT Docket No. 95-157
Regarding a Plan for Sharing	)	RM-8643
the Costs of Microwave Relocation	)	

REPLY COMMENTS OF THE SPRINT TELECOMMUNICATIONS VENTURE

The Sprint Telecommunications Venture ("STV")[1/] believes firmly that the Commission has not only the authority but the obligation to refine its microwave-relocation process in this docket to expedite PCS service to the American public and minimize opportunities for abuse and profiteering in public licenses by a small proportion of microwave incumbents, while still providing full and fair protection for all incumbents. STV's initial comments carefully detailed its experience with the serious public policy problem created by bad-faith demands put forth by irresponsible incumbents and facilitated by the current rules. The comments of virtually all PCS licensees and the organizations representing them establish the breadth and depth of the problem raised by incumbent profiteering.[2/] Certain incumbents that refuse to acknowledge this clear evidence of abuse

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[1/] STV is a joint venture formed by subsidiaries of Sprint Corporation, Tele-Communications, Inc., Comcast Corporation, and Cox Communications, Inc. STV was formed to provide nationwide competitive wireline and wireless services. The wireless component of STV will offer PCS services through WirelessCo, L.P. and PhillieCo, L.P. Directly or through its affiliates, STV currently has the right to provide PCS service in areas populated by more than 180 million Americans.

[2/] *See, e.g.*, Comments of GO Communications Corporation, p. 4 ("These [premium] costs are often extortionate as microwave incumbents have sought to exploit the Commission's two-year voluntary negotiating period in negotiations with PCS licensees anxious to get their systems running and be the first to market"); Comments of Southwestern are either misinformed or have chosen to ignore the reality of the bad-faith negotiations practiced by some of their peers.[3/]

The touchstone in this proceeding, as in much of communications policy (and, indeed, the current legislation pending before Congress) should be *good-faith negotiation.* It is difficult to imagine that this proposition even could be challenged, although certain incumbents actually argue that "good faith" should not be required of them. The concrete demonstrations of bad-faith negotiations now contained in this docket provide further support for STV's proposal that the Commission either collapse the "voluntary" and "mandatory" periods into a single, integrated good-faith negotiation period or, less preferably, establish

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Bell Mobile Systems, Inc., p. 2 ("no parameters have been established for how negotiations are to be conducted during the voluntary period. Because current relocation guidelines only require the parties to negotiate in good faith during the mandatory negotiation period, the clear inference is that the parties who are intent on formulating a timely and viable relocation agreement need not necessarily conduct their negotiations in good faith"); Comments of PCS PrimeCo L.P. p. 6 ("however much the FCC intended the rules to act as a shield protecting the microwave incumbents from expense and inconvenience, circumstances and human nature have made of this shield a powerful sword that a small but significant group of incumbents have brandished as they hector PCS licensees with extortionate, unreasonable demands").

[3/] For example, incumbent Maine Microwave Associates suggests the extortionist reputation attributed to various incumbents may be undeserved. Maine claims its experience reveals $1 million per link may represent a conservative estimate instead of "greenmail," Comments of Maine Microwave Associates, p. 2, a position that is impossible to square with the actual cost of accomplishing legitimate relocations. Maine's comments are a prime example of an incumbent's use of their primary license status to extract exorbitant cash settlements from PCS licenses. There has not been a single cost estimate to date which has indicated that a link relocation could even approach the $1 million figure alleged by Maine. Similarly, the Association of Public Safety Communications Officials ("APCO") claims there is no "significant evidence" that relocation negotiations are impeding PCS deployment. In light of the many examples cited by STV, CTIA and PCIA to the contrary, APCO's representation simply is not credible. For only one example, the Suffolk County, New York Police Department's excessive premium demand for $18 million plus a full, systemic digital rebuild has now been widely noted.

bright-line standards to police the conduct of the relatively limited "bad actor" incumbents that threaten to delay the launch of PCS. However, many incumbent commenters raised legitimate concerns about systemic relocations -- that is, the relocation of entire microwave systems, even when some paths in those systems are not within the relocating PCS licensee's spectrum band. In light of these legitimate concerns, we have further tailored our proposals in these replies.

I. THE COMMISSION CAN AND SHOULD INCORPORATE GOOD FAITH/BAD FAITH CONCEPTS INTO ITS CURRENT RELOCATION FRAMEWORK.

STV does not seek a wholesale reopening of those proceedings. Contrary to certain incumbents' allegations, PCS licensees are not here seeking to fundamentally alter the relocation rules or to compromise incumbents' legitimate interests but rather to assure the integrity of the process that the Commission crafted to protect these interests.[4/] We simply ask the Commission to clarify the rules to address a flaw of great public importance that has arisen since the rules' adoption and that was not anticipated in the earlier proceedings. No one could predict that certain irresponsible incumbents would manipulate various components of the existing relocation framework for their own selfish gain. It was only after the implementation of the rules that such misconduct emerged.

The relocation proceedings of ET Docket No. 92-9 had long since closed when it became apparent that minor modifications to the rules, consistent with the rules' original purpose, were necessary to check further abuse and assure the integrity of negotiations. STV

[4/] *See* UTC Comments, p. 4.

seeks to remedy defects in the existing framework which experience now has exposed. Since the implementation of the rules, the cost sharing proceeding has been the only formal opportunity the PCS industry has had to raise the incumbent misconduct issue. Accordingly, STV's proposals regarding good-faith negotiations and bad actor conduct are proper subjects for consideration in the instant proceeding.

Several incumbents argue the Commission should not clarify at all the standards by which microwave incumbents should conduct themselves during negotiations because additional guidelines would impede market-based negotiations.[5] Incumbents' concern that a good-faith requirement would interfere with negotiations is misplaced. First, a good faith requirement would neither undermine the fundamental purpose of the voluntary period nor transform the period's function of facilitating incentive-based negotiations. Both PCS providers and incumbents would continue to have an incentive to negotiate reasonable premium payments in exchange for timely relocations. A good faith requirement would

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[5] For example, Industrial Telecommunications Association, Inc. ("ITA") argues the Commission must preserve the basic dichotomy between the voluntary and mandatory periods. ITA Comments, p. 4. ITA believes that the purpose of the voluntary period is to expedite relocation by enabling incumbents to take advantage of a variety of incentives. According to ITA, the imposition of a good faith requirement during the voluntary period would effectively undermine the period's fundamental purpose. Similarly, American Public Power Association ("APPA"), the Los Angeles County Sheriff's Department, and Tenneco Energy argue that the NPRM's proposal to create a rebuttable presumption of bad faith is misguided and unfairly slanted in favor of PCS licensees. APPA Comments, p. 3; Comments of Los Angeles County Sheriff's Department, p. 4. Rather than imply bad faith, they argue that an incumbent's rejection of an offer is more likely indicative of a disagreement between the PCS provider and incumbent about the definition of "comparable facilities." APPA argues the adoption of the bad faith presumption would seriously undermine market-based negotiations by creating significant pressure for incumbents to accept any offer by a new licensee. APPA Comments, p. 3.

serve only to level the playing field by holding certain incumbents accountable for their misconduct.

Second, neither STV's proposals nor the *Notice*'s proposed presumption of bad faith would not unduly prejudice microwave incumbents. Incumbents argue that the proposed presumption may unfairly characterize an incumbent's disagreement with a PCS licensee over the nature of "comparable" replacement facilities as bad faith, thus pressuring an incumbent to accept any offer to escape the presumption of bad faith. This argument, however, ignores the fact that the proposed presumption is rebuttable. If an incumbent feels its rejection is the result of a legitimate comparability disagreement, it may offer evidence to that effect in the context of alternative dispute resolution proceedings. Overall, proposals set forth by STV and the Commission should be adopted.

A. The Commission Should Clarify Its Rules To Provide For Either a Single, Integrated Good Faith Negotiation Period Or, At The Very Least, To Impose a Bad Actor Prohibition During The Existing Voluntary Period.

The adoption of a single integrated, good-faith negotiation period is the best solution to facilitate relocations that are effective and fair to both PCS licensees and incumbents. Contrary to assertions by certain incumbent commentators, collapsing the voluntary and mandatory period into a single good-faith negotiation period would not eliminate the flexibility that characterizes the voluntary period. Parties still would be free to negotiate for premiums as incentives for speedy relocation. A good faith requirement would eliminate abuse by requiring premium demands to have some relationship to actual relocation costs.[6]

If the Commission decides to retain the current, two-period negotiation structure, it should at least impose STV's proposed "bad actor" prohibition on the voluntary period. Because incumbent misconduct boils down to unreasonable premium demands, the Commission should advise in advance that a demand for premium payments in excess of 120 percent (110 percent after the first year of the negotiation period) of the actual costs of relocating to a comparable facility constitutes bad faith and an abuse of a government-conferred privilege (*i.e.*, its FCC license).[7] This proposed bad actor prohibition is good public policy. *First*, it is fair to responsible incumbents because it acknowledges that reasonable premium demands are acceptable. *Second*, it targets only abusive incumbents by isolating the point at which a demand for premium becomes an untoward attempt to extract excessive value from the spectrum.[8] *Third*, it provides a bright-line test that establishes

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[6] STV also supports the use of independent cost estimates at the end of the first year of negotiations to determine the actual cost of replacement equipment. These estimates will assist parties in determining which portion of an incumbent's demand represents relocation costs and which portion represents premium.

[7] Comments of Sprint Telecommunications Venture, p. 20. If a microwave incumbent believes it could show that such a demand could be justified in a particular set of circumstances, it would, of course, be free to do so.

[8] STV also takes issue with National Rural Electric Cooperative Association's contention that a good faith requirement during voluntary negotiations is unnecessary because local and state laws are sufficient to police negotiations between business entities. Comments of National Rural Electric Cooperative Association, p. 6. Even assuming state and local laws would otherwise be sufficient to police relocation negotiations, the Commission's current rules likely would preempt such basic safeguards. The current structure of the relocation rules implies that good faith negotiations are not required during the voluntary period. Thus,

"bad-actor" behavior only when an incumbent's premium demands exceed a concrete percentage of relocation costs to comparable facilities, thus preventing an incumbent from being capriciously labelled as a "bad actor" simply for rejecting an offer of comparable facilities.[9]

B. The "Bad Actor" Approach May Be Refined To Include An Alternative Test To Facilitate Relocation Of Entire Systems Of Microwave Paths.

Several commenters favored relocations of entire operating microwave systems (so-called "systemic relocations").[10] STV also has recognized, in its private negotiations, that there are circumstances in which incumbents may legitimately seek to encourage systemic relocations. STV is persuaded that an appropriate alternative to either STV's proposed good-

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any state or local laws purporting to require good faith would be in conflict with federal regulations and thus likely would be preempted under the supremacy clause. Even if it would be permissible for state and local authorities to regulate the relocation process, it cannot be seriously doubted that such a patchwork quilt of inconsistent and varying local regulations would be inefficient and unfair to PCS licensees and incumbents alike.

[9] For example, incumbent Tenneco Energy asserts that a counter-proposal by an incumbent microwave licensee requiring improvement in an initial offer should not automatically constitute a rebuttable presumption of "bad faith." Comments of Tenneco Energy, p. 8. Similarly, UTC argues the Commission's proposed "presumption is tantamount to equating good faith to an obligation to accept whatever the PCS licensee considers to be comparable facilities on a take-it-or-suffer-the-consequences basis." UTC Comments, p. 18.

[10] For example, incumbent Maine Microwave Associates stated they could not live with a piecemeal, link by link solution to their system replacement because "[o]ur particular company needs a systemwide solution to stay in business and remain profitable." Comments of Maine Microwave Associates, p. 3. Similarly, incumbent Williams Wireless, Inc. stated that "[t]o maintain the safety of the existing system while creating a new, equally safe, replacement system, WWI must perform the relocation of the entire system at one time . . . ." Comments of Williams Wireless, Inc., p. 4. Interstate Natural Gas Association of America also highlighted the importance of relocating entire systems by stating that pipeline operators "need the time and flexibility to consider system-wide solutions -- not just a link here or a link there." Comments of Interstate Natural Gas Association of America, p. 2.

faith or bad-actor standards should be crafted to permit incumbents to legitimately seek systemic relocations.[11]

STV recommends that "bad actor" conduct should be triggered only by (1) the rejection of a proposal that includes a 20 percent or greater premium (10 percent after the first year), as outlined in our initial comments (pp. 19-20) or (2) the rejection of an appropriate proposal for a systemic relocation. An appropriate offer for systemic relocation would include two essential elements. *First*, it would contain a proposal to relocate all paths in the system that are operating in one of the blocks of licensed PCS spectrum (both to ensure that the relocating PCS licensee will have an opportunity to obtain cost-sharing for the systemic relocation and to prevent undue windfalls to incumbents). *Second*, the offer for a systemic relocation should contain a proposal to relocate all paths in the system that are geographically proximate to the PCS licensee's area -- specifically, those paths in which at least one transmit or receive site is located within the PCS licensee's licensing area. This qualification would prevent incumbents with large, multi-state systems from demanding a New York-to-Houston "systemic" relocation from a single licensee in only one licensing area covered by the "system" (an example that is based in fact).

Under this proposal, virtually any legitimate relocation could be accomplished. PCS licensees would have the option of offering to relocate specific paths to comparable facilities

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[11] This alternative should only be adopted, of course, if the cost-sharing rules adopted by the Commission would permit a PCS licensee to recover the cost of portions of the system that are outside their spectrum block or licensing area from other PCS licensees that either are building later or are building systems in adjoining licensing areas. This need will be particularly acute for Block C licensees, which will operate in substantially smaller licensing areas.

in other frequency bands at up to a 20 percent/10 percent premium when only certain paths would cause interference to their operations, or they could offer to relocate entire systems (as defined above). Any incumbent rejecting a 20 percent/10 percent premium or demanding greater out-of-market and/or out-of-band systemic relocations legitimately should be regarded as engaging in "bad actor" behavior. This test would target specific entities that now seek to abuse their position as Commission licensees, while permitting legitimate, cooperative negotiations to proceed quickly and expeditiously.

II. THE COMMISSION'S DEFINITION OF "COMPARABLE FACILITIES" IS PROPER.

For purposes of the mandatory period (if a separate mandatory period is retained), the *Notice* provides that an offer by a PCS licensee to replace a microwave incumbent's system with "comparable facilities" constitutes a "good faith" offer (¶ 69). The three main factors for determining when a facility is comparable are communications throughput, system reliability, and operating costs (¶ 73). Several incumbent commentators contend the definition of "comparable facilities" is arbitrary, too narrow and limits the quality of replacement systems.[12/] Several incumbents also argue that the *Notice*'s exclusion of "extraneous expenses" such as consultant and attorney fees during the mandatory period is improper.[13/] Finally, as discussed above, some incumbents rely on the "comparable

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[12/] *See* Comments of Tenneco Energy, pp. 9-10; Comments of the Los Angeles County Sheriff's Department, p. 4; Comments of Association of Public-Safety Communications Officials International, Inc., pp. 6-7.

[13/] See NPRM at ¶ 75.

facilities" definition's alleged inadequacies to justify rejection of the Commission's bad faith presumption. None of these arguments are persuasive.

A. The Commission Should Not Automatically Require PCS Licensees to Provide Digital Replacement Equipment to Meet Their Obligation of Supplying "Comparable Facilities" During the Mandatory Period.

Several incumbents argue that providing "comparable facilities" should mean PCS licensees must make incumbents "whole."[14/] We do not disagree with this statement in principle; in fact, the Commission's Rules effectively ensure that the incumbent will be made whole. But we absolutely disagree with the improper attempt by incumbents to create a new right to replace analog equipment with much more expensive state-of-the-art digital equipment under the guise of being "made whole."[15/]

As stated in its Comments, STV believes it is appropriate for PCS licensees to replace analog systems with digital equipment when, for engineering reasons, it is not possible to continue with analog facilities due to the relocation. In cases where there is no suitable analog replacement, the costs for digital systems would be considered comparable replacement costs. However, the Commission should not require a PCS licensee to replace

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[14/] *See* Comments of City of San Diego, p. 6.

[15/] See Comments of Association of Public-Safety Communications Official International, p. 6-7; Comments of Alexander Utility Engineering, Inc., p.5; Comments of Los Angeles County Sheriff's Department, p. 5.

a system with digital equipment if a technically acceptable analog system is available. Such a requirement would unjustly enrich incumbents by providing them with a windfall.[16]

UTC argues that in assessing comparability, the Commission should consider what type of microwave systems it would be reasonable for incumbents to purchase today if they were to do so on their own (p. 25). This reasoning is flawed because the microwave incumbents are not operating as independent consumers in the relocation process. Instead, the rules seek to provide incumbents with facilities that are comparable to those incumbents now use to minimize disruption to existing systems by facilitating a seamless transition. The purpose of the rules is not to supply incumbents with the type of system that suits some agenda unrelated to the move to new frequencies. Rather, for determining comparability, the focus should be on matching the incumbent's existing system. A replacement facility should be presumed comparable if the new system's communications throughput, reliability, and operating costs are equal to or greater than those of the existing system. In its *Third Report and Order and Memorandum Opinion and Order* in ET Docket 92-9, the Commission determined that "comparable facilities" meant facilities "equal to or superior to existing facilities."[17] Thus, notwithstanding the technological benefits of digital equipment, when

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[16] STV agrees with Southern Bell Mobile Systems that incumbents alone should bear the additional cost if they desire to obtain digital equipment that exceeds the parameters of their current system. The PCS licensee could provide the incumbent with sums necessary to replace the affected analog link or links, which the incumbents, of their own accord, could use toward the cost of a total digital upgrade, but that step would be within the incumbent's discretion and should not dictate what is interpreted as making the incumbent "whole."

[17] Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, Third Report and Order and Memorandum Opinion and Order, 9 F.C.C. Rcd. 6589 (1993).

comparable analog equipment is available, it constitutes a replacement that is at least "equal to" an incumbent's existing analog facility.

STV supports the Commission's proposal to impose a rebuttable presumption of bad faith to incumbents who refuse offers of comparable facilities. As previously indicated, one of the problems incumbents identified with this proposal is the supposedly restrictive nature of the Commission's definition of "comparable facilities."[18] For example, APPA and the Los Angeles County Sheriff's Department contend that given the level of uncertainty surrounding what constitutes "comparable facilities," it would be unjust to assume an incumbent is acting in bad faith when it rejects a relocation offer. Much of this argument is centered on the fact that the Commission (quite properly) has not defined "comparable facilities" to automatically include new digital replacements.

Clearly, the failure to automatically include digital upgrades in the definition of "comparable facilities" does not, standing alone, make the definition arbitrary or uncertain. Indeed, if there were such an across-the-board standard, it would be entirely arbitrary and unreasonable. First, the relocation rules only require a PCS licensee to provide an incumbent with full cost reimbursement for fully effective substitute facilities. Second, the *Notice* clearly articulates the circumstances under which a digital upgrade is required to fulfill a relocator's obligation as well as when an acceptable analog replacement exists. Moreover, the factors detailed in the *Notice* provide sufficient guidance for determining comparability.

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[18] See Comments of Association of Public-Safety Communications Officials-International, Inc., p. 6.

B. Full and Fair Compensation To Consultants Should Be Made, But "Extraneous Expenses" as Defined in the *Notice* Should Not Be Reimbursable.

The *Notice* tentatively concludes that "comparable facilities" would be limited to actual costs associated with providing a replacement system (*e.g.*, equipment, engineering expenses). The Commission proposes to exclude "extraneous expenses," such as fees for attorneys and consultants that are hired by the incumbent without the advance approval of the PCS relocator.[19/] We agree with this proposal. STV advocates full reimbursement of all reasonable, legitimate costs incurred by incumbents in connection with voluntary or involuntary relocation. Thus, with respect to compensable costs during the mandatory period, STV is not opposed to paying for those costs which can be legitimately and reasonably tied to the relocation process -- engineering and administrative fees, necessary FCC filing and application preparation expenses, and the like. The Commission has a well-developed body of case law on "reasonable and prudent" expenses, upon which it can rely here as a standard.[20/]

[19/] *Notice*, ¶ 76.

[20/] "Reasonable and prudent expenses" include expenses incurred in preparing, filing and advocating the granting of a new station application. *Amendment of Section 73.3525 of the Commission's Rules Regarding Settlement Agreements Among Applicants for Construction Permits*, 6 F.C.C. Rcd. 85 (1990). Reimbursement of a dismissing broadcast applicant's reasonable and prudent expenses by a competitor does not permit automatic reimbursement of *all* expenses incurred by the dismissing applicant, but only those necessary to the preparation, filing and advocacy of the specific application. *See Guy S. Erway*, 49 R.R.2d 563 (1981); *WTAR Radio-TV Corp.*, 76 F.C.C.2d 239 (1980) (reimbursement would not include a $5,000 payment made to a lobbying organization because such payment was clearly not related to the preparing or advocating of the application). Documentation requirements under this standard also are settled and may be applied here. *See Linda A. Cinciotta, Esq.*, 48 R.R.2d 700 (1980).

However, some of the consulting and legal services currently utilized by microwave incumbents are unnecessary to the relocation process and therefore clearly fall short of the "reasonable and prudent" standard.[21] Clearly, PCS licensees should not be required to reimburse incumbents for costs they incur in viewing the relocation process as a profit-making business opportunity.[22] In fact, permitting these expenses to be compensable would send precisely the wrong signal to incumbents -- rather than discourage profiteering with publicly granted licenses, permitting this genre of consultancy activities to be compensable would actually encourage unreasonable behavior.

III. REPLIES TO OTHER ASPECTS OF THE COMMISSION'S COST SHARING PROPOSAL

STV reiterates its support for the Commission's prompt adoption of effective, mandatory cost-sharing procedures. STV here addresses and expands upon three previously raised proposals which will both simplify these procedures and increase their effectiveness.

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[21] Incumbents argue that in addition to actual replacement equipment costs, PCS licensees must also absorb PCS-related costs represented by lost opportunities, lost business, related soft costs and other expenses incurred by the incumbent in accommodating PCS. Comments of Williams Wireless, Inc., p. 4; Comments of Association of Public-Safety Communications Officials-International, Inc. p. 8; Comments of City of San Diego, p.7; See Comments of Los Angeles County Sheriff's Department, p. 6, Comments of UTC, p. 24; Comments of Santee Cooper, p.2; Comments of Cox & Smith Inc.

[22] For example, some of the services listed in a consultant agreement between the City of San Diego and the law firm of Keller and Heckman include preparation of an economic assessment which reviews the following: (1) the value of the vacated spectrum to the PCS licensee; (2) the effect of waiting the allotted time or vacating the spectrum in short order; and (3) the potential net profitability of each market to the wireless providers including assignment of a value to the 2 GHz microwave spectrum licensed to the City on the basis of potential profitability. *See* "2 GHz Microwave Relocation Consultant Agreement Between the City of San Diego and Keller and Heckman," May 22, 1995, on file in this docket, pp. 5-6.

First, STV's proposal for a soft reimbursement cap would not negatively impact relocation negotiations by placing an artificial ceiling on the price of replacing a link. Second, PCS licensees alone should provide for the proposed cost sharing Clearinghouse. Third, STV's proposed proximity threshold concept is superior to the TIA Bulletin 10-F in determining interference. Moreover, in order to administer the proximity threshold trigger easily and fairly for all licensees, only co-channel interference should be considered for reimbursement purposes.

A. STV's Proposed Soft Reimbursement Cap of $250,000 Will Not Negatively Impact Relocation Negotiations.

Several incumbents are concerned the *Notice's* proposed $250,000 reimbursement cap is either too low or will operate as an artificial ceiling on relocation amounts PCS licensees offer incumbents.[23] The flexibility of STV's proposed soft cap adequately addresses these concerns. STV's proposal allows for all actual costs less than or equal to $250,000 to be reimbursable whether or not such costs include premium payments. A PCS relocator may, however, recover the full cost of relocation to comparable facilities even if such costs exceed the $250,000 reimbursement cap. Thus, the proposed cap would not short change the specific needs of those relocations which require more expensive systems. However,

[23] Comments of Maine Microwave Associates, p. 2; Comments of National Rural Electric Cooperative Association, p. 5 ("Such a cap acts as an artificial ceiling on relocation amounts paid. Such caps are not efficient in determining 'prices' for future link relocation because incumbents' systems are not 'cookie cutter'"); Comments of Alexander Utility Engineering, Inc., p. 2; Comments of American Gas Association, p.4 ("We believe that the proposed cap is too low and does not allow for extraordinary circumstances where costs are much higher. An arbitrarily low cap is likely to result in new licensees' refusal to pay a higher amount when in fact the specific requirements of a particular relocation dictate a much more expensive system be put in place").

premium payments (costs for any features beyond relocation to comparable facilities) which exceed the $250,000 cap would not be reimbursable, thereby protecting subsequent licensees from subsidizing a PCS relocator's first-to-market advantage. Because a PCS relocator who paid more than $250,000 per link to relocate to comparable facilities is assured reimbursement, STV's plan provides no incentive for relocators to limit the amount of their relocation offers to incumbents. Thus, by accommodating the specific needs and expenses of each relocation, STV's proposed soft cap would not foster an artificial ceiling on PCS licensees' offers to incumbents.

B. The Cost Sharing Clearinghouse Should Be Wholly Supported by the PCS Industry.

STV opposes any incumbent involvement in the proposed cost sharing Clearinghouse. Because cost sharing administration strictly affects PCS licensees, there is no need for microwave incumbents to have input in allocating reimbursement obligations. Such allocations will occur post path relocations and in no way involves the interests of microwave incumbents. In addition, STV recommends the Commission designate PCIA as the Clearinghouse. PCIA has a clear understanding of the cost-sharing process and has been involved in cost-sharing discussions since the idea was first proposed in the industry.

C. The Commission Should Adopt STV's Proposed Proximity Threshold Method To Determine Co-Channel Interference.

STV reiterates and expands upon its proposal to use the proximity threshold method to trigger cost sharing obligations. The proximity threshold method provides an easier and more definite determination of interference than the proposed TIA Bulletin 10-F. The proximity threshold method involves the formation of a rectangle around each relocated path. Then as subsequent PCS base stations are constructed and commercially activated, only a simple distance calculation is required to determine if there is a reimbursement obligation.

A brief explanation of the proximity threshold's creation is useful to a thorough understanding of its advantages over the *Notice's* TIA Bulletin 10-F method. As indicated in STV's Comments, the proximity threshold method was developed for use in a cost-sharing agreement between STV, AT&T, PCS PrimeCo, and GTE. These PCS licensees employed Comsearch to initiate a study to determine the distance from a microwave receiver in which there was a 95 percent confidence coefficient of interference along eight radials emanating from the microwave antenna. *See* Attachment B. The study revealed the width of the rectangle was 30 miles formed by two 15-mile lengths extending perpendicular to the microwave path. The length of the rectangle was found to extend approximately 100 miles beyond each endpoint. After considering various factors including earth curvature, buildings and terrain variations throughout the nation, the four licensees agreed upon the distance of 30 miles beyond each endpoint because this distance made the length of the rectangle dependent upon the path length of the microwave link. The equation for length of the rectangle is L = 30 + path length + 30 = 60 + path length (miles).

To support the dimensions of the rectangle, the four licensees requested Comsearch to perform a second study in which a proximity threshold rectangle is identified and base stations are located within the rectangle. *See* Attachment C. As indicated in the study, there is a 100% chance of interference when a base station is located at one of the 35 points identified within the rectangle.

The proximity threshold method is not perfect. However, for the occasions in which a non-interfering base station is located within the rectangle, there is expected to be a statistical cancellation with the occasions where an interfering base station is located outside the rectangle. Moreover, as indicated in STV's Comments, the proximity threshold concept is superior to the proposed TIA Bulletin method because it offers a clear "yes" or "no" determination of reimbursement responsibility. Because many current microwave paths extend beyond licensed PCS markets or run very close to borders, the proximity threshold trigger would reduce the possibility of disputes and thereby eliminate additional administrative burdens.

With respect to the type of interference that warrants reimbursement, STV believes only co-channel interference should trigger cost sharing obligations. As an initial matter, STV's proposed proximity threshold method does not calculate adjacent-channel interference. In addition, the complexity in adding adjacent channel considerations to the interference determination is not warranted.

Under the proximity threshold method, reimbursement is required if any portion of the relocated path was co-channel with any portion of the subsequent licensees PCS block. This rule, defined as the co-channel/co-block rule, would be fair to all licensees by establishing which subsequent licensees benefitted from a relocated path. It is very difficult to measure the benefit from a co-channel relocation after the path is removed from the PCS spectrum. There are varying benefits a subsequent PCS licensee can enjoy due to path removal. These benefits include reduced effort in RF planning, additional coverage area available, additional capacity of the PCS network, reduced risk of inadvertent interference, and a reduction of site location restrictions. The objective of cost sharing is to provide cost reimbursement for benefits received. The co-channel/co-block interference rule meets this objective.

STV also seeks to further clarify its position regarding reimbursement for systemic relocations. Once a cost-sharing obligation is incurred for a single path in a systemic relocation, STV proposes adding all other co-channel/co-block paths relocated as part of the original agreement to the cost-sharing obligation. Therefore, PCS relocators can avoid the financial burden of receiving piecemeal reimbursement for a systemic relocation. The reasoning behind this proposal is the subsequent licensee would have been responsible for providing the incumbent with a systemic solution if not for the prior relocation performed by the PCS relocator. Because the proximity threshold rectangles will extend beyond the licensed PCS boundaries, so should the cost-sharing obligation. Thus, for systemic reimbursements the cost sharing obligation is limited to only those paths which are within proximity threshold range of the subsequent licensees licensed area. In other words, a systemic reimbursement includes all co-channel/co-block paths which have any portion of the proximity threshold rectangle overlapping the licensed area of the incoming PCS licensee.

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Because of the immediate need for effective and fair relocations and the now-concrete evidence of abuses that will delay the introduction of PCS in the United States, we urge the Commission to move quickly to clarify its microwave-relocation rules and to adopt fair and comprehensive cost-sharing rules.

Respectfully submitted,

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January 12, 1996

ATTACHMENT A